

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KENNETH BAILEY,	:	
	:	Civil Action No. 3:10-CV-310
Petitioner	:	
	:	
v.	:	(Judge Caputo)
	:	
THOMAS V. DURAN, in his official	:	(Magistrate Judge Carlson)
capacity as Warden of the Clinton	:	
County Correctional Facility,	:	
McElhatten, Pennsylvania;	:	
THOMAS R. DECKER, in his official	:	
capacity as Philadelphia Field Office	:	
Director for Detention and Removal,	:	
U.S. Department of Homeland Security,	:	
Immigration and Customs Enforcement;	:	
and ERIC HOLDER, in his official	:	
capacity as Attorney General of the U.S.	:	
Department of Justice,	:	
	:	
Respondents	:	

ORDER

AND NOW, this 23rd day of March, 2010, Petitioner Kenneth Bailey, having brought the above-captioned action seeking a writ of habeas corpus in order to, *inter alia*, compel the Respondents to provide him with an individualized custody hearing while the Department of Homeland Security seeks to effect his removal from the United States (Doc. 1); and Respondents having previously been granted an extension of time to file a brief in response to the petition so that their response would “comport with nationwide policy and procedures” (Doc. 4, ¶ 4); and following the requested extension, Respondents having filed a brief opposing the petition on March 12, 2010 (Doc. 10); and Respondents having relied chiefly on the Board of Immigration Appeal’s decision in *Matter of Saysana*, 24 I&N 602 (BIA 2008), in support of their view that Petitioner is properly subject to mandatory detention under 8 U.S.C. § 1226(c); INA § 236(c),

and that he is not entitled to an individualized custody hearing (id.); and Petitioner having filed a brief in reply on March 22, 2010, in which he contends that the Department of Homeland Security has recently taken a legal position in a separate matter pending before the Board of Immigration Appeals that is directly contrary to the position that Respondents have taken in this case; and Petitioner having asserted that in that other matter, the Department of Homeland Security has requested that the Board of Immigration Appeals revisit its decision in *Matter of Saysana*, and issue “a superceding precedent decision” agreeing with the interpretation of 8 U.S.C. § 1226(c); INA § 236(c), that Petitioner has advanced in this case as a basis for granting his petition (Doc. 11); and the Court finding that Petitioner has raised a substantial issue that merits a prompt response from Respondents to clarify the position they have taken in this action, and to explain how this position is consistent with the Department of Homeland Security’s current interpretation of 8 U.S.C. § 1226(c); INA § 236(c) as applied to detainees such as Petitioner; **IT IS HEREBY ORDERED THAT** Respondents shall file a supplemental response to address the matters raised in Petitioner’s reply brief on or before **Thursday, March 25, 2010.**

/s/ *Martin C. Carlson*

Martin C. Carlson

United States Magistrate Judge